IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 851 of 2003

CRA.41/2002 of SESSIONS COURT, THRISSUR
ST.3706/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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REVN. PETITIONER: APPELLANT/ACCUSED

C.R.AJAYAN, S/O. RAGHAVAN,
CHULLY HOUSE, NENMANIKKARA, PUDUKKAD P.O.,
THRISSUR DISTRICT.

BY ADV. SRI.C.A.CHACKO
SMT.SONIYA.M

RESPONDENTS: RESPONDENTS & STATE/COMPLAINANT

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1. SURESH K.V., S/O. VASU,
KADHALIKADAN HOUSE, PUDUKKAD, THRISSUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.R.P.No.851 OF 2003

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ORDER

Dated, 3rd Dec. 2007

A.K.BASHEER, J.

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Crl.R.P.No.851 OF 2003

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Dated this the 3rd day of December 2007

ORDER

Petitioner was concurrently found guilty under Section 138 of the N.I. Act by the trial court as well as the appellate court. The trial court convicted and sentenced the petitioner to suffer simple imprisonment for three months. The appellate court while confirming the order of conviction and sentence passed by the trial court, further directed the petitioner to pay a compensation of Rs.1,25,000/- and in default to suffer simple imprisonment for three months.

2. The learned Sessions Judge had passed the above order while allowing the revision petition preferred by the complainant, which was considered along with the appeal filed by the accused. The above common order passed by the learned Sessions Judge is under challenge in this revision petition.

3. The case of the complainant was that the petitioner/accused had borrowed a sum of Rs.1,00,000/- from him and issued Ext.P1 cheque in discharge of the said debt. When the cheque was presented for encashment, it was dishonoured due to

insufficiency of funds in the account of the petitioner. Though a statutory notice was issued demanding payment, the accused had failed to discharge the liability. Hence the complaint.

4. The complainant was examined as PW1 and Exts.P1 to P8 were marked on his side. There was no oral or documentary evidence on the side of the defence. The learned Magistrate, after an elaborate consideration of the oral and documentary evidence, found the petitioner guilty under Section 138 of the Act and accordingly convicted and sentenced him to undergo simple imprisonment for three months.

5. The defence taken up by the petitioner before the trial court was that his brother had borrowed a sum of Rs.10,000/- from the complainant and a blank cheque signed by the petitioner was handed over to the complainant to discharge the said liability. The trial court noticed that the petitioner had failed to substantiate the above case set up by him. Significantly, petitioner had not disputed his signature in Ext.P1 cheque.

6. The appellate court had re-evaluated the oral and documentary evidence and concurred with the finding entered by the trial court. The learned Sessions Judge however took the view

that complainant was entitled to get the cheque amount as compensation. It was therefore that the learned Sessions Judge had modified the sentence while confirming the order of conviction and sentence passed by the trial court.

7. Learned counsel for the petitioner submits that the sentence of imprisonment awarded by the courts below is a little too harsh and unjust. It is also pointed out by the learned counsel that the amount of compensation awarded is also excessive. I am unable to agree.

8. It may be noticed that petitioner had no case that the signature in Ext.P1 cheque was not put by him. His contention was that the said cheque was handed over to the complainant as security for a loan of Rs.10,000/- advanced by the complainant to his brother. Petitioner had not bothered to adduce oral or documentary evidence to substantiate the above contention. The complainant had satisfactorily established his case.

9. In the above facts and circumstances, I do not find any reason to interfere with the concurrent finding of conviction entered by the courts below. However, since the learned counsel submits that petitioner is prepared to pay off the amount as

directed by the appellate court, I am satisfied that petitioner can be granted an opportunity to do so, particularly since learned counsel for the complainant submits that the complainant is more interested in getting his money.

10. Therefore, while confirming the order of conviction passed against the petitioner under Section 138 of the Act, the sentence of imprisonment for three months imposed on him is set aside. But the petitioner shall suffer imprisonment for one day and shall also pay the compensation as directed by the appellate court.

Petitioner shall appear before the trial court on or before January 31, 2008 and remit the sum of Rs.1,25,000/- as directed by the appellate court. Learned Magistrate shall ensure that the petitioner suffers imprisonment till the rising of the court on the day when he appears before the court. If the petitioner fails to comply with the above direction, the learned Magistrate shall ensure that the default sentence imposed by the appellate court is executed forthwith.

(A.K.BASHEER, JUDGE)

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